

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES P. BRODERSEN and DEPARTMENT OF THE ARMY,
SIERRA ARMY DEPOT, Herlong, CA

*Docket No. 99-344; Submitted on the Record;
Issued May 9, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has more than 36 percent permanent impairment of his left upper extremity for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than a 36 percent permanent impairment of his left upper extremity, for which he received a schedule award.

Appellant, a motor vehicle operator, injured his left hand on August 19, 1996. The Office of Workers' Compensation Programs accepted his claim for entrapment neuropathy of the left ulnar and median nerves. Appellant requested a schedule award on August 15, 1997. By decision dated November 18, 1997, the Office granted appellant a schedule award for a 36 percent permanent impairment of his left upper extremity. Appellant requested an oral hearing and by decision dated September 15, 1998, the hearing representative affirmed the November 18, 1997 decision finding that appellant had submitted no medical evidence establishing additional impairment. Appellant, through his attorney requested reconsideration on September 22, 1998. By decision dated October 7, 1998, the Office denied modification of its November 18, 1997 decision.¹

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations

¹ Following appellant's appeal to the Board on October 13, 1998, the Office issued a decision regarding appellant's claim for recurrence of disability on December 7, 1998. As appellant has not appealed this decision and as the Office's determination of whether appellant sustained a recurrence of disability does not address the issue before the Board of appellant's permanent impairment, the Board will not address this issue on appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

In this case, Dr. Leif Havton, a Board-certified neurologist and second opinion physician, examined appellant on May 27, 1997. He found that appellant had decreased muscle bulk and tone in the hypothenar muscles and weakness in both the ulnar and median nerve distribution. Dr. Havton also found weakness in the interossei muscles. He stated that appellant was unable to spread the fingers and that hand grip was 4/5. Dr. Havton stated that appellant had residual function in pinching between the first and second finger. He found mild weakness with collapsing features in both extension and flexion secondary to pain. Dr. Havton found decreased sensation to light touch, pinprick and cold over both the ventral and dorsal sides of the left hand below the wrist. He concluded that appellant had weakness and sensory disturbances associated with decreased fine motor skills involving the left hand involving the ulnar and median nerves. Dr. Havton found that appellant had reached maximum medical improvement.

The Office medical adviser reviewed this report on October 27, 1997 and correlated the findings with the A.M.A., *Guides*. He noted that hand grip of 4/5 was a 25 percent weakness⁶ and a 10 percent impairment of the upper extremity. The Office medical adviser found that appellant had no loss of range of motion. He found altered sensation on the ulnar nerve distribution, which could prevent activity for 80 percent impairment of the ulnar nerve, which has a maximum value of 7 percent for 6 percent impairment of the upper extremity.⁷ The Office medical adviser found 60 percent impairment of the medial nerve for pain that may interfere with activity for 23 percent impairment.⁸ He utilized the combined values table to reach 35 percent impairment of the left upper extremity. Finally, the medical adviser noted that a 36 percent impairment of the arm was equivalent to a 40 percent impairment of the left hand.⁹

The Board cases are clear that if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹⁰ The Board finds that the Office medical adviser properly utilized the A.M.A., *Guides* and that the Office properly determined

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides* at 65, Table 34.

⁷ A.M.A., *Guides* at 54, Table 15, 48, Table 11.

⁸ *Id.*

⁹ A.M.A., *Guides* at 19, Table 2.

¹⁰ *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

that appellant would receive more compensation for 36 percent impairment to the left upper extremity than 40 percent impairment of the left hand.¹¹

In support of his request for reconsideration, appellant submitted a report dated August 19, 1998, from Dr. Charles E. Quaglieri, a Board-certified neurologist. Dr. Quaglieri noted appellant's history of injury and provided the results of his physical examination. He stated:

"The examination here is totally functional and nonphysiologic. He has intact reflexes and bulk in his left upper extremity, especially proximally, but will make zero effort. There is no way without a new injury that he could have an exam[ination] as described in his 1997 ... evaluation and now no function of the arm at all. When one watches his walk, he obviously *holds* the left arm against his body. There is voluntary flexion of the fingers. His claw hand is not truly that of somebody with total median and ulnar neuropathies."

Dr. Quaglieri concluded that an accurate rating could not be accomplished at that time.

As appellant has submitted no medical evidence supporting an impairment rating of greater than 36 percent of the left upper extremity, the Office properly denied modification of its schedule award determination.

The October 7 and September 15, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
May 9, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

¹¹ 5 U.S.C. § 8107(c)(1) and (c)(3).